

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

Case No. DDS-84-SCLARC

OMAR R.

OAH No. 2006020785

Claimant,

vs.

**SOUTH CENTRAL LOS ANGELES
COUNTY REGIONAL CENTER,**

Service Agency.

DECISION

This matter came on regularly for hearing on April 20, 2006, in Los Angeles, California before Sandra L. Hitt, Administrative Law Judge, Office of Administrative Hearings, State of California.

South Central Los Angeles County Regional Center (SCLARC or the Regional Center) was represented by Julie Ocheltree, an attorney with Enright & Ocheltree, LLP.

Omar R.¹ was represented by his mother and father. Mr. Juan La Farga, an interpreter with Marta Baca & Assocs. Inc., served as the interpreter for the parents, who are monolingual Spanish speaking.

Evidence was received, the matter was argued, the record was closed, and the case was submitted for decision.

¹ In this Decision, Claimant's surname is replaced with the initial "R" in order to protect his privacy.

ISSUES

This is an eligibility determination. The issue in this case is whether Omar R. (hereinafter “Claimant” or “Omar”) has a developmental disability as defined by the Lanterman Act² and is thereby entitled to services from the Department of Developmental Services’ Regional Centers.

FACTUAL FINDINGS

1. Omar is a three year old boy (DOB 5/17/02). He lives with his parents and two younger siblings. His father earns minimum wage as a painter. His mother is a homemaker.

2. Omar was referred to the Regional Center by Ariel Escobedo, a social worker with the Cudahy Ready for School program, because she suspected that Omar might have autism. Omar applied for services from the Regional Center and was denied. This hearing ensued.

3. SCLARC based its denial on an evaluation of Omar by its expert witness, Ann Walker, Ph.D. Dr. Walker is a licensed clinical psychologist and a consultant to several Regional Centers. She performs psychological evaluations for the Regional Centers, largely for eligibility determinations.

In performing her evaluation of Omar, Dr. Walker reviewed an assessment prepared by LAUSD and other reports in which it was noted that Omar might be in need of special education services and had “autistic like characteristics.” Dr. Walker also met with Omar in person and administered tests, including the Autism Diagnostic Observational Schedule (ADOS) module 1 and the Wechsler Preschool and Primary Scales of Intelligence. Omar’s verbal IQ was 74 on the Wechsler Scale. Persons with mild mental-retardation show IQs of between 55 and 70. While Omar’s verbal IQ was borderline, his general intelligence was 105 on the Wechsler Scale, which is in the normal range.

Under the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV), a diagnosis of autism requires the exhibition of at least six of the following symptoms, with at least two from the first category and one each from the second and third categories.

- (1) qualitative impairment in social interaction, as manifested by at least two of the following:

² Section 4500 et seq. of the California Welfare and Institutions Code. Unless otherwise stated, all references to the Code herein are references to the California Welfare and Institutions Code.

- (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.
 - (b) failure to develop peer relationships appropriate to developmental level.
 - (c) a lack of spontaneous seeking to share enjoyment of, interests, or achievements with other people (e.g. by a lack of showing, bringing, or pointing out objects of interest)
 - (d) lack of social or emotional reciprocity
- (2) qualitative impairments in communication as manifested by at least one of the following:
 - (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to converse through alternative modes of communication such as gesture or mime)
 - (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
 - (c) stereotyped and repetitive use of language or idiosyncratic language
 - (d) lack of varied, spontaneous make-believe play or social imitative play appropriate to the developmental level.
- (3) restricted repetitive and stereotyped patterns of behavior, interest, and activities, as manifested by at least one of the following:
 - (a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
 - (b) apparently inflexible adherence to specific, nonfunctional routines or rituals
 - (c) stereotyped and repetitive motor mannerisms (e.g. hand or finger flapping or twisting, or complex whole-body movements)
 - (d) persistent preoccupation with parts or objects.

Dr. Walker concluded

that Omar only exhibited one of the symptoms set forth in Category (1), the failure to establish peer relationships. She noted that Omar uses gestures and pointing, (category 1 (a) and (c)), and that the mother had relayed an account of Omar's emotional reciprocity. Dr. Walker also noted that Omar sometimes engages in repetitive or idiosyncratic language (jargoning), (category 2 (c)), and hand flapping (category 3 (c)). Dr. Walker observed in Omar only three of the symptoms set forth in the DSM diagnostic criteria for autism. Dr. Walker determined that Omar did not have autism. Her diagnosis was that Omar has a Mixed Receptive-Expressive Language Disorder. Dr. Walker opined that Omar is not mentally retarded and does not require treatment similar to persons with mental retardation.

4. There was no evidence that Omar has cerebral palsy or epilepsy.

5. Omar's parents submitted Omar's 2006 Individualized Education Program (IEP) into evidence. On this IEP it is noted that Omar was rated as non-autistic by his parents on the CARS assessment and mildly/moderately autistic in the area of body use. This IEP also pointed out Omar's seeming lack of preference for, or interest in, social situations, impairment of social interaction, obsession to maintain sameness, ritualistic behavior, difficulty making or maintaining eye contact, jargoning, hand-flapping, tapping on things, walking following the lines on the street, and preoccupation with people's faces; all of these behaviors are consistent with autism. LAUSD found Omar eligible for special education services under the eligibility criteria of autism.

6. Omar's parents also submitted a letter from Ariel Escobedo, MSW who noted that Omar had symptoms of a Pervasive Developmental Disorder, a condition on the autism spectrum. She noted that Omar has been observed to hit his younger siblings when they interfere in his solitary play and that he is beginning to show resistance in complying with limit-setting directives. SCLARC's expert, Dr. Walker, opined that Omar does not have a Pervasive Developmental Disorder.

7. Omar was present during the hearing; he exhibited expressive gestures such as pointing out objects of interest. This is one of the DSM IV factors considered in diagnosing autism, as set forth in paragraph 3, above.

LEGAL CONCLUSIONS

1. Section 4512 of the California Welfare and Institutions Code defines a developmental disability as:

a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

California Code of Regulations Title 17 Section 54000 defines developmental disability as a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other conditions similar to mental retardation. The designation "conditions similar to mental retardation" is sometimes referred to as the "fifth category." Eligibility for Regional Center Services under the fifth category requires a

determination either that an individual functions in a manner similar to that of a person with mental retardation OR that the individual requires treatment similar to that required by individuals with mental retardation.

2. Omar exhibits a number of autistic-like traits (Findings 3 and 5), which are not explained by Dr. Walker's finding of a language disorder. Given that LAUSD has determined Omar to be eligible for special education based on autism (Finding 5), and the conflicting conclusions of Omar's parents, teachers, and his social worker on the one hand, and SCLARC's expert, on the other hand, there is insufficient evidence to make a determination of Omar's eligibility for services under the Lanterman Act. Thus, cause exists to order an independent psychological evaluation of Omar.

WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

Within 30 days of the date of this decision, SCLARC shall arrange for a psychological evaluation of Omar by a qualified practitioner at the Division of Mental Retardation and Child Psychiatry, Neuropsychiatric Institute (Institute), University of California, Los Angeles, School of Medicine, 760 Westwood Plaza, Los Angeles, California, 90024. SCLARC shall pay for this evaluation and take it into consideration when reconsidering Omar's eligibility for Regional Center Services.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

DATED: April 25, 2006

SANDRA L. HITT
Administrative Law Judge
Office of Administrative Hearings